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FISCAL IMPACT STATEMENT

LS 7416

BILL NUMBER: HB 1318

NOTE PREPARED: Jan 20, 2015

BILL AMENDED:

SUBJECT: Communications Services and Providers.

FIRST AUTHOR: Rep. Koch

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill eliminates the requirement that a communications service provider allow a physical connection by other providers to its system. It establishes a uniform statewide procedure for applications for and issuance of permits for the construction and modification of structures and facilities for the provision of wireless communications service.

The bill defines "utility" for purposes of IC 14-18-10 (the law concerning utility easements) to include a communications service provider. It provides that the Director of the Department of Natural Resources may not impose a charge to issue a permit to erect or construct a utility line upon or across a public highway right-of-way that passes through state land.

Effective Date: July 1, 2015.

Explanation of State Expenditures:

Explanation of State Revenues: *Department of Natural Resources (DNR) Permit Fees:* The bill provides that the DNR shall not impose a charge to issue a permit required when a utility is erecting or constructing a line upon or across that part of a public highway right-of-way that passes through a state park, a state forest, a state game preserve, or land acquired by the state and set aside for use by the public as a scenic or historic place. The Natural Resources Commission Information Bulletin #28 contains standard easement fees for utilities wishing to locate on DNR property. However, DNR reports that although the right-of-way may be on state forest or park land, utility easements that occur within a state highway right-of-way fall into the Department of Transportation's (INDOT) jurisdiction. INDOT reports that utilities are not charged to be in the INDOT right-of-way.

Court Fee Revenue: The bill provides that an applicant may bring an action for a violation of the bill's provisions in any court with jurisdiction and seek recovery of litigation costs and attorney's fees. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana. Proceeds from the automated record keeping fee (\$5) are deposited into the State User Fee Fund.

Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures: Summary - This bill establishes a uniform process for wireless providers seeking to obtain permits from local permit authorities for:

- (1) Construction of a new wireless support structure.
- (2) Substantial modification of a wireless support structure.
- (3) Collocation of wireless facilities on an existing structure.

Local permit authorities would have to alter their current processes regarding permitting for wireless providers in order to comply with the bill's requirements. The impact on local permit authorities' workload and expenditures would vary.

Additional Information - The bill provides the information that would be included in permits for new wireless support structures, substantial modifications of wireless support structures, and collocation. The permit authority must review applications within 30 days of receipt to determine if they are complete. Permit authorities must also review applications to determine if they comply with applicable laws or ordinances governing land use and zoning. The bill provides that the ability of a permit authority to exercise zoning, land use, planning, or permitting authority under current law with regard to the siting of new wireless support structures would not be affected. However, applications for permits for collocation would not be required to comply with zoning or land use requirements and would not be subject to public hearing.

Permit authorities would not be allowed to make certain requirements when reviewing applications or issuing permits, limit duration of permits, impose certain compliance measures for radio frequency emissions, and impose moratoriums or otherwise delay the approval or issuance of applications or permits for the construction of new wireless support structures, the substantial modification of existing wireless support structures, or collocations.

The bill provides that permit authorities shall offer a successful applicant a lease to construct or locate an approved wireless support structure, wireless facility, or small cell network on property that is owned or otherwise controlled by the permit authority. A lease must be for at least 25 years and be consistent with the fair market value for similar property.

The bill defines "permit authority" as a unit, a board, a commission, or any other governing body that makes legislative or administrative decisions concerning the construction, installation, modification, or siting of

wireless facilities or wireless support structures. The term does not include a court or other judicial body that reviews decisions or rulings made by a permit authority.

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$2) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per document) are charged for preparing transcripts or copies of record or certificate under seal.
- A service fee (\$10) is collected from the filing party for each defendant beyond the first cited in the lawsuit.

State Agencies Affected: Department of Natural Resources.

Local Agencies Affected: Local authorities making legislative or administrative decisions concerning the construction, installation, modification, or siting of wireless facilities or wireless support structures; Trial courts, city and town courts.

Information Sources: Natural Resources Commission, Information Bulletin #28 (First Amendment), Easements on Department of Natural Resources Properties and Navigable Waters at:
<http://www.in.gov/nrc/files/IB28.pdf>

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